

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE THE COMPLAINT AND)	Civil No. 10-CV-1721 KPE
PETITION OF TRITON ASSET LEASING)	
GmbH, TRANSOCEAN HOLDINGS LLC,)	IN ADMIRALTY
TRANSOCEAN OFFSHORE)	
DEEPWATER DRILLING INC., AND)	
TRANSOCEAN DEEPWATER INC., AS)	
OWNER, MANAGING OWNERS,)	
OWNERS PRO-HAC VICE, AND/OR)	
OPERATORS OF THE MODU)	
DEEPWATER HORIZON, IN A CAUSE)	
FOR EXONERATION FROM OR)	
LIMITATION OF LIABILITY)	

**OPPOSED MOTION OF THE UNITED STATES, APPEARING SPECIALLY
AND NOT GENERALLY, TO LIFT OR MODIFY THE COURT’S AMENDED
MONITION AS TO CERTAIN CLAIMS AND CAUSES OF ACTION**

The United States, appearing specially and not generally, moves to lift or modify the Court’s Amended Monition in order to clarify that, as respects the fire, explosion, sinking, oil spill, injuries to natural resources, and other damages associated with the *Deepwater Horizon*, the Limitation of Liability Act of 1851 (the “Limitation Act”), 46 U.S.C. §§ 30501, *et seq.*, and Rule F of the Supplemental Rules for Certain Admiralty and Maritime Cases (“Rule F”), shall neither apply to nor affect the following claims, actions, causes of action, or proceedings: (1) any claims of the United States, the States, political subdivisions of any State, Indian Tribes, or private parties under the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. §§ 2701, *et seq.*, whether such claims are called “direct” or “indirect” OPA claims; (2) any claims within the scope of actions and claims brought by any person or entity within the scope of 33 U.S.C. § 2718, including, but not limited to, claims brought by the United States, the States, and political subdivisions of any State concerning civil penalties, administrative penalties, or injunctive relief, or claims and actions by private parties asserting claims reserved and allowed by OPA, 33 U.S.C. § 2718; and (3) claims pursuant to the Park System Resource Protection Act (“PSRPA”), 16 U.S.C. §§ 19jj, *et seq.*, the National Marine Sanctuaries

Act (“NMSA”), 16 U.S.C. §§ 1331, *et seq.*, the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251, *et seq.*, the Rivers and Harbors Act (“RHA”), 33 U.S.C. §§ 401, *et seq.*, and the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601, *et seq.*


The United States respectfully draws the Court’s attention to *United States v. CF Industries, Inc.*, 542 F. Supp. 952, 956-57 (D. Minn. 1982). In *CF Industries*, the defendant filed a petition under the Limitation Act, after which the United States instituted an independent proceeding in which it asserted a civil penalty claim under the Clean Water Act. The limitation petitioner complained that the United States improperly filed suit in a separate proceeding from the limitation action, and that the injunction issued by the limitation court applied to all proceedings. The court held, however, that because the civil penalty assessment under the CWA was not subject to limitation under the Limitation Act, the limitation court had no jurisdiction whatsoever over the United States’ civil penalty claim. *Id.* at 956-57. Without jurisdiction, the injunction was meaningless. Nevertheless, out of respect for the Court the United States, appearing specially, has filed this motion rather than proceeding independently as in *CF Industries*.

Finally, this motion is also wholly without prejudice to other potential rights, claims, and causes of action the United States may have, all such potential rights, claims, and causes of action against Petitioners or any person or entity expressly being reserved.

Dated: June 1, 2010.

Respectfully submitted,

TONY WEST
Assistant Attorney General
KEITH WYATT
Assistant United States Attorney
PETER F. FROST, Director
Torts Branch, Civil Division
Admiralty and Aviation
U. S. Department of Justice
P. O. Box 14271, Ben Franklin Station
Washington, DC 20044-4000
Telephone: (202) 616-4026
Facsimile: (202) 616-4002
E-mail: peter.frost@usdoj.gov


R. MICHAEL UNDERHILL
Attorney in Charge, West Coast Office
Torts Branch, Civil Division
U.S. Department of Justice
7-5395 Federal Bldg., Box 36028
450 Golden Gate Avenue
San Francisco, California 94102-3463
Telephone: (415) 436-6648
Facsimile : (415) 436-6632
E-mail: mike.underhill@usdoj.gov

Attorney in Charge in this
Proceeding on Behalf of the
UNITED STATES OF AMERICA,
Appearing Specially and Not Generally

IGNACIA MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
STEVEN O'ROURKE, Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Telephone: (202) 514-4080
e-mail: steve.o'rourke@usdoj.gov

Attorneys for the UNITED STATES
OF AMERICA, Appearing Specially and
Not Generally

//

//

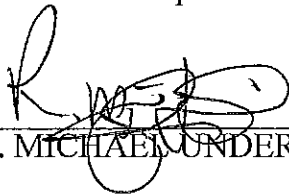
//

//

//

CERTIFICATE OF COMPLIANCE

I certify that in accordance with the Local Rules of Court, counsel for Petitioners and the United States have met and conferred in an attempt to resolve the issues addressed in the United States' motion. Given the timing of the Court's briefing schedule, counsel have conferred in good faith. Although the United States believes that the parties were able to reach tentative agreement on many of the issues, the parties were unable to reach agreement on all issues and on the specific terms and language of a proposed order that would be mutually satisfactory. The United States remains willing to continue to work with Transocean to resolve these issues prior to a court ruling.



R. MICHAEL UNDERHILL

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was filed via the Live District CM/ECF system on June 1, 2010, which caused an electronic copy of same to be served automatically on counsel of record.



R. MICHAEL UNDERHILL